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itors accordingly as the husband or wife dies first. *Servis* v. *Dorn*, 76 Atl. (N. J.) 246.

At common law the husband had full rights in an estate by the entirety during the joint lives of himself and wife, except that he could not defeat the wife's right of survivorship. *Washburn* v. *Burns*, 34 N. J. L. 18. The married woman's property acts gave the wife the right to enjoy her estate during coverture. *Hiles* v. *Fisher*, 144 N. Y. 306. This did not abolish estates by the entirety. It did, however, limit the husband's rights to possession during their joint lives. Thereafter the husband and wife had each a right to the profits of an undivided half, the fee passing to the survivor. *Buttlar* v. *Rosenblath*, 42 N. J. Eq. 651. It seems that the decree in the principal case, while it recognizes this separate right in the wife, should have more fully protected it. Judgment creditors of the husband could acquire no hold on her interest. She was entitled to one-half the interest of the surplus. There should also be provision for partition in case the estate is severed otherwise than by death, *e. g.*, by divorce. She would then become a tenant in common with her husband. *Stelz* v. *Shreck*, 128 N. Y. 263. *Cf. Mardt* v. *Scharmach*, 65 N. Y. Misc. 124.

INJUNCTIONS — ACTS RESTRAINED — INFRINGEMENT OF PATENT BY PUBLIC OFFICERS. — The complainant filed a bill to restrain county commissioners from using, in a courthouse, a ventilating device which infringed on his patent. *Held*, that the injunction should not be granted. *McCreery Engineering Co.* v. *Massachusetts Fan Co.*, 180 Fed. 115 (Circ. Ct., D. Mass.).

In the United States the sovereign has no right to use patented inventions without compensation to the patentee. *James* v. *Campbell*, 104 U. S. 356. Yet the sovereign cannot be sued without its consent. Hence it has been held by the Supreme Court that if patented articles have come into the possession of the government, agents using them for the government cannot be enjoined from so doing, on the ground that such an injunction would in substance be directed against the sovereign. *Belknap* v. *Schild*, 161 U. S. 10. If it be conceded that a courthouse is an agency of the state the principal case would seem correct, even though it permits individuals to continue doing admittedly wrongful acts. The patentee is not without remedy, for he can recover from the commissioners the damages he has sustained. Even if agents are expressly authorized by government officials to commit illegal acts they are personally liable for the consequences in actions at law. *Bates* v. *Clark*, 95 U. S. 204.

INSURANCE — CONSTRUCTION AND OPERATION OF CONDITIONS — INSURANCE BROKER AS AGENT OF INSURED TO PAY PREMIUMS. — An insurance policy containing a stipulation that it should become null and void upon the dishonor of any note given in payment, was issued by the defendant company's agent to the plaintiff. A note for the first premium, payable to the agent, was received by him and held until maturity. The defendant company issued a receipt, acknowledging payment, forwarded it to the agent and charged his account with the amount. Subsequently the note was dishonored. *Held*, that the policy was not rendered invalid. *Perea* v. *State Life Insurance Co.*, 110 Pac. 559 (N. M.).

Whether such a policy is forfeited depends on a nice determination as to where the loss from the non-payment of the note primarily falls. If the note has been endorsed to the company, its dishonor would render the policy void. *Fidelity Mutual Life Insurance Co.* v. *Bussell*, 75 Ark. 25. If it was retained by the agent and he was debited on the books of the company with the amount, although with the understanding that the company would save him harmless, then the validity of the policy cannot be impaired. *Southern Mutual Life Insurance Co.* v. *Best*, 8 Ky. L. Rep. 535. Granting that these two cases, so nearly similar, correctly state the law, they mark the exact line of distinction;

for the first does and the second does not come within the literal terms of the forfeiture clause. In the latter, as in the principal case, no note was received by the company. It elected to treat the broker as the agent of the assured, and took payment by deducting a sum from his accounts. Another recent case supports this reasoning, *Williams* v. *Empire etc. Insurance Co.*, 68 S. E. 1082 (Ga.).

INTERSTATE COMMERCE — CONTROL BY CONGRESS — FEDERAL EMPLOYERS' LIABILITY ACT OF 1908. — The Federal Employers' Liability Act of April 22, 1908, provides that "every common carrier by railroad while engaging in commerce between any of the several states . . . shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce . . . for such injury . . . resulting in whole or in part from the negligence of any of the officers, agents or employees of such carrier. . . ." *Held*, that the statute is constitutional in so far as it applies to the negligence of employees engaged at the time in interstate commerce. *Zikos* v. *Oregon R. & Navigation Co.*, 179 Fed. 893 (Circ. Ct., E. D. Wash.).

The court follows a *dictum* of a majority of the Supreme Court that an employers' liability act is a rightful exercise of the power of Congress to regulate interstate commerce. See *The Employers' Liability Cases*, 207 U. S. 463, 495; 21 HARV. L. REV. 290; 22 *id.* 38. A former act of Congress attempting to regulate this matter was declared unconstitutional because it inseparably included intrastate commerce. *The Employers' Liability Cases*, *supra*. The present act is so worded as to allow employees engaged in interstate commerce to recover for injuries caused by fellow-servants whether the latter are so employed or not. The court holds that the act is separable, and valid at least in part. The test in such a case is whether the legislative body would have passed the part in question alone. *Illinois Central R. R.* v. *McKendree*, 203 U. S. 514. In the principal case the court considers it beyond controversy that the two classes of employees were not inseparably embraced within the statute. No opinion is expressed as to whether there could be recovery if the injury were caused by the negligence of an employee not engaged in interstate commerce.

JUDGMENTS — OPERATION AGAINST THIRD PARTIES — CONCLUSIVENESS AS TO PERSONS NOT PARTIES TO SUIT. — A conveyed land to B for life, and then to the heirs of her body. Purchasers from B and her daughter brought various suits against them to quiet title, and judgment was rendered for the purchasers. In eminent domain proceedings, the question arose as to whether the grandchildren of B were concluded by these judgments. *Held*, that as the grandchildren, not then *in esse*, were not parties to the suits, they are not bound by the decrees. *Los Angeles County* v. *Winans*, 109 Pac. 640 (Cal.).

By the California Code, the Rule in Shelley's Case is abolished, so that B's grandchildren take by purchase, not by descent. CAL. CIV. CODE, 1906, § 779. Hence if they were barred it was not by the sale but by the judgments. In equity all who will be affected by the decree are necessary parties. But when a particular party, though not personally before the court, is so represented by others that his interest is fully protected, the decree binds him. *Hale* v. *Hale*, 146 Ill. 227. Where estates in land are limited over to persons not *in esse*, their interests are represented by the living owner of the first estate of inheritance, or if there is no such person, by the life tenant. *Giffard* v. *Hort*, 1 Sch. & Lef. 386. This doctrine of virtual representation, however, will not apply, unless the interests of the represented and the representative are identical, so that motives of self-interest will induce the latter thoroughly to contest the question. *Downey* v. *Seib*, 185 N. Y. 427. By their sale, B and her daughter became hostile to the remaindermen's interest, and therefore did not represent them in these suits.